

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 20, 2006

STATE OF TENNESSEE v. TRAVIS T. WHITE

Direct Appeal from the Criminal Court for Davidson County
No. 2004-B-1643 Monte Watkins, Judge

No. M2005-01991-CCA-R3-CD - Filed October 13, 2006

Following a jury trial, Defendant was found guilty of criminal impersonation, a Class B misdemeanor, and felony evading arrest, a Class D felony. The trial court sentenced Defendant as a Range III, career offender, to twelve years for his felony conviction, and a concurrent sentence of eleven months, twenty-nine days for the misdemeanor conviction. Defendant does not appeal his sentences. The sole issue on appeal is a challenge to the legal sufficiency of the evidence to support the convictions. Although not raised by either party, we notice as plain error that Defendant's judgment for his criminal impersonation conviction classifies the offense as a Class A misdemeanor, rather than a Class B misdemeanor, and the trial court erroneously sentenced Defendant to eleven months, twenty-nine days for this conviction. *See* Tenn. R. Crim. P. 52(b). After a thorough review, we affirm Defendant's conviction of felony evading arrest. We reverse and remand Defendant's conviction of criminal impersonation for the entry of a corrected judgment consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Criminal Court Affirmed in Part; Reversed in Part; and Remanded

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID G. HAYES and NORMA MCGEE OGLE, JJ. joined.

F. Michie Gibson, Jr., Nashville, Tennessee, for the appellant, Travis T. White.

Paul G. Summers, Attorney General and Reporter; David E. Coenen, Assistant Attorney General; Victor S. (Torry) Johnson III, District Attorney General; Kristen Shea, Assistant District Attorney General; and Michael Rohling, Assistant District Attorney General, for the appellee, the State of Tennessee.

OPINION

I. Background

While on patrol around midnight on April 1, 2004, Officer Jason Wilkerson, with the Metro Police Department, ran the license tag number of a Honda Accord through the department's computer system and discovered that the tag number did not match the vehicle. Officer Wilkerson activated his emergency equipment, and initiated a traffic stop. The driver of the vehicle told Officer Wilkerson that he did not have a driver's license or any form of identification with him. The driver identified himself as "Travis Wright" and said that he lived nearby with his fiancée. He said that he was born on October 11, 1968, and his social security number was [Redacted]. Officer Wilkerson identified Defendant at trial as the driver of the Honda Accord.

Officer Wilkerson said that Defendant kept lowering his hands toward the car seat, and he told Defendant to keep his hands up. Officer Wilkerson described Defendant as "fidgety" during the traffic stop. Officer Wilkerson returned to his patrol car and called for back-up. While he was attempting to verify the information Defendant had provided, Defendant sped away from the scene. Officer Wilkerson chased the Honda for approximately three miles. Officer Wilkerson said that there were numerous cars on the streets during the chase, and part of the chase occurred in a residential area. Officer Wilkerson said that Defendant's vehicle at one point was traveling seventy miles per hour. The chase ended when Defendant lost control of his vehicle and crashed into a parked vehicle on Russell Street. Defendant reached under the seat for something and then fled on foot. Officer Wilkerson said that he saw a semi-automatic pistol in Defendant's hand. Officer Wilkerson pursued Defendant until he lost sight of him in an alley.

Officer Wilkerson searched Defendant's vehicle and found an apron and a pay stub from Shoney's, Inc. made out to "Travis Tyrone White." Officer Wilkerson said that there was an outstanding arrest warrant for a parole violation under that name, and the driver's license for this individual was suspended. Mr. White's birth date was listed as October 11, 1969, and his social security number was [Redacted]. Officer Wilkerson reviewed the mug shot for "Travis Tyrone White" and verified that Defendant was Mr. White. Defendant was arrested two days later at the Shoney's location where he worked. Officer Wilkerson said that the license tag number on Defendant's car was registered to a vehicle owned by John Martin from White House, Tennessee.

The State rested its case-in-chief. Defendant testified in his own behalf. Defendant acknowledged that he had fifteen prior aggravated robbery convictions and one especially aggravated robbery conviction, but he said that he was armed only with a BB gun during the commission of the offenses. Defendant testified that he made arrangements to purchase the Honda Accord from his landlord, Mickey Milan, a few days before the incident. The Honda had four flat tires and was missing the battery. Defendant said that he hired a man, whom he knew only as "Little James" or "Little J," to repair the vehicle. When the Honda was operable, "Little James" asked Defendant if he could take the car for a test drive. Defendant gave his consent. "Little James" drove away from the apartment complex and never returned with the vehicle. Defendant said that he tried to report

the vehicle as stolen to the police, but the police department declined to accept the report because the vehicle was not yet titled in Defendant's name. Defendant acknowledged that he had left his pay stub and work apron in the back of the vehicle.

On cross-examination, Defendant said that he did not know what Mr. Milan did about his stolen vehicle. Defendant surmised that "Little James" got the information concerning Defendant's date of birth and social security number from the pay stub. Defendant denied that he knew about the outstanding arrest warrant for parole violation.

Gloria Barker, Defendant's fiancée, testified and recounted a version of the incident involving the Honda Accord which was substantially the same as Defendant's explanation.

II. Sufficiency of the Evidence

Defendant challenges the sufficiency of the convicting evidence. Defendant contends that the State's only witness, Officer Wilkerson, did not have sufficient opportunity to identify Defendant as the perpetrator of the offenses, and submits that he and Ms. Barker sufficiently explained why Defendant was not the driver of the Honda on the night of the offenses.

When a defendant challenges the sufficiency of the convicting evidence, we must review the evidence in a light most favorable to the prosecution in determining whether a rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979). Once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Black*, 815 S.W.2d 166, 175 (Tenn. 1991). The defendant has the burden of overcoming this presumption, and the State is entitled to the strongest legitimate view of the evidence along with all reasonable inferences which may be drawn from that evidence. *Id.*; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The jury is presumed to have resolved all conflicts and drawn any reasonable inferences in favor of the State. *State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984). Questions concerning the credibility of witnesses, the weight and value to be given the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). These rules are applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

A. Identification Evidence

The identity of the perpetrator is an essential element of any crime. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (citing *State v. Thompson*, 519 S.W.2d 789, 793 (Tenn. 1975)). Viewing the evidence in the light most favorable to the State, Officer Wilkerson testified that Defendant was the driver of the Honda Accord which was involved in the incident. The name, date of birth, and social security number provided by the driver of the Honda and that of Defendant's varied only by one or two numbers or letters. Defendant's pay stub and apron were found in the back of the Honda. Issues

concerning the amount of time Officer Wilkerson had to observe Defendant up close, and the environment in which the identification took place, go to the weight of the evidence presented by the State.

The jury heard Defendant's and Ms. Barker's testimony concerning the identity of the driver of the Honda Accord, and, by its verdict, obviously resolved any conflicts in favor of the State's witnesses. *See State v. Grace*, 493 S.W.2d 474, 476 (Tenn.1973) (finding that "[a] guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State"). Based on the foregoing, we conclude that the State presented sufficient evidence to identify Defendant as the perpetrator of the offenses beyond a reasonable doubt.

B. Felony Evading Arrest

Defendant was convicted of Class D felony evading arrest. "It is unlawful for any person, while operating a motor vehicle on any street, road, alley or highway in this state, to intentionally flee . . . any law enforcement officer, after having received any signal from such officer to bring the vehicle to a stop." T.C.A. § 39-16-603(b)(1). Felony evading arrest is a Class D felony if "the attempt to allude create[d] a risk of death or injury to innocent bystanders or other third parties." *Id.* § 39-16-603(b)(3).

Officer Wilkerson, who was in uniform and driving a patrol car, testified that he activated his emergency equipment and brought Defendant's vehicle to a stop. While Officer Wilkerson was attempting to verify the information Defendant initially gave him, Defendant sped away from the scene, stopping only when he crashed his vehicle into a parked car. Defendant then fled on foot. The high-speed chase took place in both commercial and residential areas at speeds reaching seventy miles per hour and lasted for approximately three miles. Officer Wilkerson testified that there were "quite a few cars [on the street] at that time of night." The offense of felony evading arrest requires proof that Defendant's actions in alluding Officer Wilkerson created a risk of danger or injury to others. The presence of other vehicles on the street during the course of a high speed chase supports a finding that Defendant's conduct placed others in danger. *State v. Turner*, 193 S.W.3d 522, 525 (Tenn. 2006). After reviewing the record, we conclude that Officer Wilkerson's testimony supports a reasonable inference that the cars on the street in the business area portion of the chase were driven by "innocent bystanders or other third parties." We conclude that the evidence was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that Defendant was guilty of the offense of felony evading arrest. Defendant is not entitled to relief on this issue.

C. Criminal Impersonation

As relevant here, a person commits the offense of criminal impersonation when the person assumes a false identity with the intent to defraud another person. T.C.A. § 39-16-301(a)(1). Defendant presented himself as "Travis Wright" to Officer Wilkerson during the traffic stop, and he misstated his date of birth and social security number. As a result, Officer Wilkerson was not able

to initially ascertain Defendant's identity and compliance with licensing requirements. *See* T.C.A. § 55-50-351(a) (providing that every driver shall have his or her license "in immediate possession at all times when operating a motor vehicle and shall display it upon demand of any officer"); *see also Delaware v. Prouse*, 440 U.S. 648, 654, 99 S. Ct. 1391, 1398, 59 L. Ed. 2d 660 (1979) (holding that during a valid investigatory stop, a police officer may verify a driver's identity and compliance with licensing requirements).

Based on the foregoing, we conclude that the evidence was sufficient to support Defendant's conviction of criminal impersonation. *See State v. Brooks*, 909 S.W.2d 854, 859 (Tenn. Crim. App. 1995) (concluding that to establish the offense of criminal impersonation, the State need show only that the accused intended to misrepresent his true identity to the arresting officer).

Although not raised by either party, we notice as "plain error," *see* Tenn. R. Crim. P. 52(b), that the judgment classifies the offense of criminal impersonation as a Class A misdemeanor, and that the trial court sentenced Defendant to eleven months, twenty nine days, the maximum sentence for this class of misdemeanor. *See* T.C.A. § 40-35-111(e)(1). The offense of criminal impersonation, however, is a Class B misdemeanor. *Id.* § 39-16-301(b). A defendant convicted of a Class B misdemeanor is subject to a sentence of not greater than six months. *Id.* § 40-35-111(e)(2). Accordingly, we reverse Defendant's conviction of criminal impersonation and remand for the entry of a corrected judgment to reflect Defendant's conviction of criminal impersonation, a Class B misdemeanor, with a sentence of six months, to be served concurrently with the sentence for felony evading arrest.

CONCLUSION

After a thorough review, we affirm Defendant's conviction of felony evading arrest. Defendant's conviction of criminal impersonation is reversed and remanded for the entry of a corrected judgment showing a sentence of six months, concurrent with the sentence for felony evading arrest, for the Class B misdemeanor offense of criminal impersonation.

THOMAS T. WOODALL, JUDGE